HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition no. 4338 (S/S) 2001

Laxman Singh Negi S/o Sri Dungar Singh Negi,
Village Gunsar, District Almora. ----Petitioner.

Vs.

1. Managing Director Jal Nigam, U.P. at Lucknow,
2. Chief Engineer Jal Nigam, 11 Mohini Road, Dehradun,
3. Superintendenting Engineer,
   Construction Circle, Jal Nigam, Almora. ----Respondents.

Sri B.D. Upadhyay, learned counsel for the petitioner,
Sri D.S. Patni, learned counsel for the respondents.

Hon'ble M.M. Ghildiyal, J.

Heard Sri B.D. Upadhyay, learned counsel for the petitioner and Sri D.S. Patni, learned counsel for the respondents.

The petitioner has filed this writ petition for the following reliefs:-

(a) A writ petition order or direction in the nature of mandamus directing the respondents to consider the case of the petitioner for his regularisation on the post of Draftsman.

(b) A writ petition order or direction in the nature of mandamus directing the respondents to pay the petitioner the minimum pay scale till he is regularised on the post of Draftsman.

(c) Any other writ order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case.

Contention of the petitioner is that he was engaged as Daily Wager in the U.P. Jal Nigam (now Uttaranchal Payjal Nigam) in the year 1989. Since 1989 he has been working on daily wage basis as Draftsman. The petitioner is qualified to be

appointed as Draftsman and he possesses the minimum qualifications prescribed for the post.

The Executive Engineer, Construction Brach U.P. Jal Nigam Bageshwar vide order dated 29.08.1998 recommended the case of the petitioner for regular appointment as Draftsman in the Department, as the petitioner has been working as Draftsman since 1989 on Daily Wage basis. Inspite of this recommendation, no action was taken, consequently the petitioner filed the present writ petition.

This Court on 10.09.2001 directed the respondents to pay minimum pay scale of the post to the petitioner. In pursuance of this direction, the respondents started paying minimum pay scale to the petitioner. Again on 25.06.2004, this Court passed an order that since the petitioner is getting minimum pay scale, as per the direction of this Court and is working from 1989, a case may be considered for regularization the petitioner's.

On 05.08.2004, the Superintending Engineer wrote a letter to the Executive Engineer stating there in that since there is a ban on recruitments and till there is ban, the petitioner cannot be appointed on the post of Draftsman in the regular establishment.

From the letter of Executive Engineer, which was addressed to the Superintending Engineer dated 29.08.1998, it emerges out that two posts of Draftsman are vacant in the construction division, U.P. Jal Nigam, Bageshwar. It is stated in the aforesaid letter that apart from two posts, which are vacant in the Bageshwar, the posts are also vacant in the circle.

It is not disputed that the petitioner is working in the Department since 1989. Learned counsel for the petitioner has placed reliance (2000) 1 UPLBC 240 Bimal Chand Pandey & another vs. Engineer in Chief, Public Works Departments and

ors.; wherein the Division Bench of the Allahabad High Court has held that the Department cannot deep a person as temporary or on daily wage basis indefinitely. Some employees are often kept on daily wage basis or on temporary basis for years on end. No doubt, ordinarily confirmation of a temporary employee is the prerogative of the employer, but the employer cannot act arbitrarily in this regard, hence the authorities must act in a non-arbitrary manner.

The petitioner is working in the Department for more than 17 years.

Learned counsel for the respondents has submitted that the principle laid down in the aforesaid case is not applicable in the case of the petitioner.

Since the Department cannot keep a person as temporary or on daily wage basis indefinitely. Some employees are often kept on daily wage basis or on temporary basis for years together. In the present case the petitioner is working in the Department for more than 17 years. I do not find force in the submission of the learned counsel for the respondents.

For the reasons recorded above, the respondents are directed to consider the case of the petitioner for his regularisation. In case, the post is vacant at Bageshwar or in the Circle or if the post is not vacant, whenever the post fell vacant, the candidature of the petitioner shall be considered for regularisation.

With this direction, the writ petition is finally disposed of. No order as to costs.

(M.M. Ghildiyal, J.)

March 9,2006:
NCM: